

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

MATTHEW S. STRICKLAND)	
)	
Petitioner,)	
vs.)	NO. CIV-17-0843-HE
)	
JIMMY MARTIN, Warden,)	
)	
Respondent.)	

ORDER

Petitioner Matthew S. Strickland filed this action seeking habeas relief pursuant to 28 U.S.C. § 2254. Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred for initial proceedings to Magistrate Judge Gary M. Purcell. He previously concluded that the petition, which includes both exhausted and unexhausted claims, should be dismissed without prejudice for failure to exhaust administrative remedies unless petitioner voluntarily dismissed his three unexhausted claims. Because of potential statute of limitations issues, the matter was referred again to the magistrate judge for him to determine whether the action should be stayed pursuant to Rhines v. Weber, 544 U.S. 269 (2005), pending the resolution of petitioner’s state court application for post-conviction relief, which he filed on August 7, 2017.

The magistrate judge has issued a Supplemental Report and Recommendation (“Report”). After considering the three Rhines factors and concluding that all three are met here, he recommends that petitioner’s motion requesting a stay [Doc. #6] be granted.

Neither petitioner nor respondent objected to the Report. They thereby waived their right to appellate review of the factual and legal issues it addressed. Casanova v. Ulibarri, 595 F.3d 1120, 1123 (10th Cir. 2010); *see* 28 U.S.C. §636(b)(1)(C).

Accordingly, the court **ADOPTS** Magistrate Judge Purcell's Report and Recommendation and administratively stays this federal habeas action pending petitioner's exhaustion of his three unexhausted claims. Petitioner is directed to file a motion to reopen this action within **fourteen (14) days** of the date the Oklahoma Court of Criminal Appeals enters a final ruling on his pending application for state post-conviction relief.

IT IS SO ORDERED.

Dated this 5th day of February, 2018.



JOE HEATON
CHIEF U.S. DISTRICT JUDGE